

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARY Jewelers, LLC.,)
Plaintiff,)
)
v.) CIVIL ACTION NO. 04:-CV-10281 EFH
)
IBJTC Business Credit Corp. and)
David Molinario,)
Defendants.)

**PLAINTIFF ARY JEWELERS, LLC. MOTION FOR CONTINUANCE OF
CONSIDERATION OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

TO THE UNITED STATES DISTRICT COURT:

COMES NOW, ARY Jewelers, Plaintiff in the above-styled and captioned matter and files this its Motion for Continuance of Consideration of Defendants' Motion for Summary Judgment and in support hereof would respectfully show the following:

I.

Defendants have totally or intentionally failed to provide requested, pertinent documents to Plaintiff and further, the document production to date is woefully non-compliant with the applicable Federal Rules of Procedure. In addition to just totally failing to produce key, critical documents, such as the policy and procedures of the Defendant, Defendants have failed to produce responsive documents by category requested, failed to produce a privilege document log, failed to produce the original documents as kept in the course of ordinary business, and failed to remove its many form frivolous objections to Plaintiff's request for production of documents. Additionally, Defendant refused to produce for deposition, the custodian of records that had been properly noticed after

Defendants' above failures had occurred (See Notice of Deposition of Defendant's Custodian of Records attached as Exhibit 1). In fact, counsel for Defendants filed no motion seeking to nullify its deposition notice and only after inquiring, notified counsel for Plaintiff the day before said deposition was to take place in Boston, Massachusetts that Defendant was refusing to produce the custodian of records.

Counsel for Defendants intentionally kept promising to provide most of the above, stringing counsel for Plaintiff along until the Defendant could take the position that the discovery period had expired thus attempting to formalize their refusal to conduct legitimate and critical discovery.

With the same intent and purpose, counsel for Defendant and its witnesses kept relating that Steven Cole, an employee of the Defendant at the time in question, had very little, if anything, to do with the matters in question and based on those representations and relying on same, counsel for Plaintiff decided to marshall his limited resources and not take the deposition of an individual described as having little or nothing to do with the matters at hand.

Imagine the surprise of the undersigned upon receiving Defendants' Motion for Summary Judgment and in particular the affidavit of Steve Cole, who apparently went from having nothing to do with these matters to being the key, critical figure. Counsel for Plaintiff had once again been hoodwinked by the artful posturing of defense counsel.

Based on the above and as a result of same, Plaintiff asks this Court to allow Plaintiff necessary discovery/documents/depositions enumerated above, prior to any consideration/ruling by this Honorable Court on Defendants' Motion for Summary Judgment. Only after the opportunity to accomplish the above, can a proper consideration and ruling on Defendants' Motion be had.

WHEREFORE, Plaintiff asks that this Motion be granted.

Dated: November 4, 2005.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1(A)(2), counsel for Plaintiff conferred with counsel for Defendants and the same opposes the relief requested in the foregoing motion.

Steve Carrigan Lly Am

Stephen P. Carrigan/Jill L. Groff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was forwarded as indicated below by certified mail, facsimile and/or hand delivery, return receipt requested in accordance with the Federal Rules of Civil Procedure on this 4th day of November, 2005.

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